

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JOSE CERON et al.,

Plaintiffs and Respondents,

v.

SALLY LIU,

Defendant and Appellant.

A147803

(City & County of San Francisco
Super. Ct. No. CGC14541407)

Defendant Sally Liu, a landlord, appeals a judgment in favor of three of her tenants. Liu contends: (1) the entire case was unauthorized because counsel for the plaintiffs was suspended from practicing law the day after he filed the complaint and, during that period of suspension, there was no signed pleading on file as required by Code of Civil Procedure¹ section 128.7, subdivision (a); (2) the trial court erred in denying her motions for judgment on the pleadings and for dismissal of the action because all the causes of action were premised on acts covered by the litigation privilege; (3) the jury verdicts were “fatally inconsistent”; and (4) there was insufficient evidence that one of the plaintiffs suffered emotional distress. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Liu owns rental property in San Francisco (“the property”). Jose Ceron, Monica Medina, and Brian Medina are tenants who live in Unit 1 of the property. Judy Judkins

¹ All further statutory references are to the Code of Civil Procedure unless otherwise specified.

lives in Unit 3. These tenants² sued Liu, pleading numerous causes of action based on the alleged uninhabitability of the property and allegations that Liu engaged in misconduct, some of which was calculated to try to force them to vacate their homes. The complaint was signed by counsel for plaintiffs, Edward Higginbotham, and filed on August 29, 2014. The next day, Higginbotham was suspended from practicing law until October 30, 2014.

Trial before a jury occurred in September 2015. Ceron, Monica Medina, Judkins, and Liu all testified. The jury returned verdicts in favor of plaintiffs on two of their causes of action: breach of contract and violation of section 37.10B of the San Francisco Residential Rent Stabilization and Arbitration Ordinance (“Rent Ordinance”). As to Judkins’ claim that Liu violated section 37.10B, the jury found that Liu had refused to accept or acknowledge rent payments. With regard to Ceron and Monica Medina, the jury found that Liu violated section 37.10B in the following ways: (1) she interrupted, terminated, or failed to provide housing services required by state or local law, e.g., with regard to repairs and maintenance; (2) she influenced or attempted to influence Ceron and Monica Medina to vacate their rental housing by fraud, intimidation, or coercion; (3) she refused to accept or acknowledge rent payments; and (4) she engaged in other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace, or quiet of Ceron and Monica Medina, and caused, were likely to cause, or were intended to cause them to vacate their dwelling unit or to surrender or waive any rights in relation to their occupancy. The jury’s award of damages included non-economic damages for plaintiffs’ “mental suffering, anxiety and distress.”

² Brian Medina was a named plaintiff in the complaint, but judgment was not entered in his favor. No appellate issues concerning Brian Medina are raised. As such, this statement of facts and all future references to “plaintiffs” concern only Ceron, Monica Medina, and Judkins.

The trial court entered judgment and awarded plaintiffs damages in conformity with the verdicts, costs, and reasonable attorney's fees pursuant to section 37.10B, subdivision (c)(5), of the Rent Ordinance. Liu appealed.

DISCUSSION

Liu's first argument is that the entire case was unauthorized because plaintiffs' counsel, Higginbotham, was suspended from practicing law the day after he filed the complaint. Relying on section 128.7, subdivision (a), Liu argues the court should have stricken the complaint because there was no signed pleading on file during the period of Higginbotham's suspension. Although co-counsel Jeff Workman's name appeared on the complaint, she contends that was insufficient to satisfy the statute because Workman did not sign the complaint and there was no evidence he was co-counsel at the time the complaint was filed. This claim fails.

"[A]n unsigned complaint is an irregularity, rather than a 'nullity,' that may be cured by amendment. [Citation.] . . . [F]ailure to sign a complaint 'is a mere matter of form' and does not constitute a jurisdictional defect." (*Board of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1164.) Furthermore, "[n]o judgment shall be set aside . . . in any cause, . . . for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13; § 475.) Here, Liu fails to allege any prejudice from the alleged defect, and we are "not required to examine undeveloped claims, nor to make arguments for parties." (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.) We thus reject this claim.

Liu's second argument is that all the plaintiffs' causes of action were premised, at least in part, on three acts covered by the litigation privilege (Civ. Code, § 47, subd. (b)), namely, Liu's service of the three-day notices to quit on the Unit 1 plaintiffs; her previous filings of unlawful detainer actions; and her attempts to have a prior tenant in Unit 2 file

false police reports concerning the Unit 1 plaintiffs. Because all these acts were done in anticipation of, or in connection with litigation, Liu argues the trial court erred in denying her motions for judgment on the pleadings and for dismissal.

A defendant can move for judgment on the pleadings on one of two grounds: the court lacks subject matter jurisdiction over the causes of action alleged in the complaint, or the complaint fails to state sufficient facts to constitute a cause of action. (§ 438, subd. (c)(1)(B).) But such a motion can be made only as to the entire complaint or any causes of action stated therein. (§ 438, subd. (c)(2)(A).) “A motion for judgment on the pleadings is the functional equivalent of a general demurrer. [Citation.] Ordinarily, a general demurrer does not lie as to a portion of a cause of action, and if any part of a cause of action is properly pleaded, the demurrer will be overruled.” (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452.)

“The standard of review for a motion for judgment on the pleadings is the same as that for a general demurrer: We treat the pleadings as admitting all of the material facts properly pleaded, but not any contentions, deductions or conclusions of fact or law contained therein. We may also consider matters subject to judicial notice. We review the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any theory.” (*Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281, 1298.)

Here, whether or not the litigation privilege applies to the aforementioned acts as Liu claims, the complaint plainly sets forth other facts sufficient to support plaintiffs’ causes of action.³ For example, all of plaintiffs’ causes of action—with the exception of

³ Plaintiffs’ complaint alleged 12 causes of action: (1) negligent breach of the implied warranty of habitability; (2) intentional breach of the implied warranty of habitability; (3) negligent violation of Civil Code sections 1941.1 and 1941.3, Health and Safety Code section 17920.3, and the Uniform Housing Code; (4) intentional violation of Civil Code sections 1941.1 and 1941.3, Health and Safety Code section 17920.3, and the Uniform Housing Code; (5) intentional violation of Civil Code section 1942.5; (6) intentional violation of Business and Professions Code section 17200; (7) negligence;

the fifth cause of action alleging an intentional violation of Civil Code section 1942.5—were supported by the allegations regarding the uninhabitability and defects on the premises, and the allegation that Liu intended to cause plaintiffs to involuntarily vacate their homes by not remedying defects on the property. The tenth, eleventh, and twelfth causes of action for intentional infliction of emotional distress, and violation of sections 37.11A and 37.10B of the Rent Ordinance were further supported by the allegation that Liu retaliated against plaintiffs for complaining about habitability issues. As for the fifth cause of action alleging a violation of Civil Code section 1942.5, the litigation privilege does not apply to that cause of action. (*Winslett v. 1811 27th Avenue LLC* (2018) 26 Cal.App.5th 239, 254.) As such, we are not persuaded that application of the litigation privilege warranted a judgment on the pleadings or a dismissal.

Relatedly, Liu claims she was prejudiced by the trial court’s denial of her motion for judgment on the pleadings and for dismissal because the jury’s finding that she violated section 37.10B of the Rent Ordinance was premised on the testimony of Ceron and Monica Medina pertaining to Liu’s having served them with three-day notices. Although Liu argues on appeal that the litigation privilege rendered her immune from liability for issuing such notices, she fails to demonstrate that she raised the litigation privilege as a defense at trial. The trial court had no obligation “ ‘to seek out theories [defendant] might have advanced, or to articulate for [her] that which [she] has left unspoken.’ ” (*Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1130–1131.) While the failure to raise a defense at trial might not result in forfeiture where the issue “involves undisputed evidence and raises a pure question of law” (*Burckhard v. Del Monte Corp.* (1996) 48 Cal.App.4th 1912, 1918), Liu neglects to argue or show that this exception to forfeiture applies.

(8) nuisance; (9) breach of contract; (10) intentional infliction of emotional distress; (11) violation of section 37.11A of the Rent Ordinance; and (12) violation of section 37.10B of the Rent Ordinance.

Liu's third contention is that the jury verdicts were "fatally inconsistent" because the jury awarded Judkins, Ceron, and Monica Medina damages for "mental suffering, anxiety, and distress," but rejected their claims for negligence and for intentional infliction of emotional distress upon finding they did not suffer "severe emotional distress." Liu seems to contend that an award for mental or emotional distress damages under section 37.10B of the Rent Ordinance requires a finding of negligence, or the same type of severe emotional distress necessary to support a claim for intentional infliction of emotional distress. This is unpersuasive.

When a special verdict is hopelessly inconsistent, reversal is required. (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1092.) Here, no such inconsistency is shown. The jury found Liu violated section 37.10B of the Rent Ordinance, which specifically permits the recovery of damages for "mental or emotional distress." (S.F. Admin. Code, § 37.10B, subd. (c)(5).) Nowhere in section 37.10B is an award of damages for mental or emotional distress made contingent on a successful negligence claim, or a finding of severe emotional distress of the type necessary to support an intentional infliction of emotional distress claim. Liu's argument is unsupported by any authority on point.

Liu's final contention is that the evidence was insufficient to support an award of emotional distress damages for Judkins because she did not testify she suffered emotional distress during trial. Since Liu's contention essentially asks us to undertake a substantial evidence review on a clerk's transcript and a settled statement prepared by her, we summarize the rules regarding settled statements. "The purpose of a settled statement is to provide the appellate court with an adequate record from which to determine contentions of error." (*In re Marriage of Fingert* (1990) 221 Cal.App.3d 1575, 1580.) An appellant who wishes to rely on a settled statement as the record of the oral proceedings can elect to do so in her notice designating the record, or can do so by filing

a motion in the trial court. (Cal. Rules of Court,⁴ rule 8.137(b)(1), (2).) However, the notice designating the record with the election or the motion must specify the date of each oral proceeding to be included in the settled statement. (Rule 8.137(b)(3)(A).) Unless the respondent provides a reporter's transcript, the appellant must prepare, serve and file a proposed statement containing a "condensed narrative" of the oral proceedings that the appellant specified would be covered. (Rule 8.137(c)(1), (d)(2).) That proposed statement *must* "[c]ontain a statement of the points the appellant is raising on appeal." (Rule 8.137(d)(1).) "If the condensed narrative . . . covers only a portion of the oral proceedings, the appeal is then limited to the points identified in the statement unless the reviewing court determines that the record permits the full consideration of another point or, on motion, the reviewing court permits otherwise." (*Ibid.*) "Stating the points to be raised on appeal enables the respondent to determine whether additional portions of the oral proceedings should be included in the settled statement. [Citation.] *Failure to include issues in the settled statement precludes the appellant from raising them on appeal.*" (*Von Nothdurft v. Steck* (2014) 227 Cal.App.4th 524, 534, italics added.)

Here, Liu's proposed settled statement, which the trial court appears to have certified in toto, did not contain a statement of the points Liu would be raising on appeal. Because the available record does not permit full consideration of her challenge to the sufficiency of the evidence of Judkins' emotional distress, we find Liu has forfeited appellate review of this claim.⁵

DISPOSITION

The judgment of the trial court is affirmed. Plaintiffs shall recover their costs on appeal. (Rule 8.278(a)(1), (2).)

⁴ All further rule references are to the California Rules of Court.

⁵ Conversely, we did not apply this forfeiture rule to the claims previously addressed because the record permitted their full consideration.

Fujisaki, J.

WE CONCUR:

Siggins, P.J.

Petrou, J.

A147803